COURT NO .2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 75 of 2002

United India Insurance
Company Ltd. through its Divisional
Manager, Divisional Office,
Tikonia, Nainital Road,
Haldwani, Distt. Nainital. ….. **Appellant.**

Versus

Smt. Kunti Devi W/o Late Sri Deewan Singh
R/O village Dugara,
Post Office Alamia Kande,
District Almora. ….. **Respondent.**

Sri Naresh Pant, Adv., learned counsel for the appellant.
Sri Anil Kumar Joshi, Adv., learned counsel for the respondent.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 04-01-2002 passed in M.A.C. Case No. 36 of 1999, Smt. Kunti Devi Vs. United India Insurance Co. Ltd., by Motor Accident Claims Tribunal/ District Judge, Alomora ***(in short the Tribunal),*** whereby the learned Tribunal has allowed the claim petition and has awarded Rs.2,24,000/- as compensation along with interest @ 12% per annum, as mentioned in the impugned order, in favour of the claimant-respondent under Section 166 of the Act. Aggrieved, the Insurance Company-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that the accident in question was the result of rash and negligent on the part of owner-cum-driver of the vehicle, who himself had died in the motor accident, and the Tribunal has failed to appreciate the evidence on the point of income of the deceased and has challenged the quantum of award.

Brief facts of the case are that the claim petition has been preferred for compensation for the death of Diwan Singh, who died in a motor accident on 21.10.1998, with the allegations that Diwan Singh ***(the deceased)*** was driving Taxi Jeep No. U.P. 01/2678 on the fateful day. When he reached near village Kanda at about 9 p.m. in the night, all of the sudden the said Jeep met with an accident. Besides the deceased, there were three other occupants of the Jeep. In this accident, jeep driver Diwan Singh and two others sustained injuries and died. Report of the accident was lodged with Patwari Kshetra Shahron, Pali, Ranikhet on 22.10.1998. Deceased Diwan Singh was owner-cum-driver of the Jeep. He used to earn Rs. 200/- for this job. The deceased was also doing agriculture and he was a retired military personnel, getting pension. The claimant Kunti Devi and her children are dependents and legal heirs of the deceased, therefore, this petition has been filed.

The Insurance Company-appellant filed its written statement and contested the claim petition on the ground that the Insurance Company was not informed regarding the accident. The driver of the vehicle was not holding a valid driving licence at the time of the accident, therefore, the appellant is not liable for compensation. It has also been asserted that the driver of the vehicle was driving the vehicle rashly and negligently and there was violation of the provisions of the Act. Necessary documents have not been field and the claimant should satisfy the validity thereof before the Tribunal. The amount of compensation is not based on correct facts.

The learned Tribunal has framed as many as five issues in the case. **Issue No.1** related to rash and negligent driving of the jeep in question by its driver. **Issue No.2** related to the injuries and consequent death of the deceased. **Issue No.3** related to the insurance of the vehicle on the date of accident. **Issue No.4** related to the holding of valid driving licence by the driver of the vehicle. **Issue No.5** related to the compensation and relief.

The learned Tribunal after perusing the Post Mortem Report, F.I.R., extract of family register, income certificate, driving licence, Insurance Cover-note and registration certificate of the vehicle in question, took Issue Nos. 1 to 4 together for decision. The Tribunal came to the conclusion that the accident was not the result of rash and negligent driving by the driver-cum-owner of the vehicle, who himself was driving the vehicle at the time of accident. It also came to the conclusion that there is nothing to show that there was any violation of policy conditions. It has been found that the vehicle in question was duly insured and the deceased Diwan Singh was holding a valid driving licence, therefore, it has been held that the Insurance Company was liable to pay compensation. On Issue No. 5, the Tribunal found that the deceased Diwan Singh was earning total amount of Rs. 5,500/- per month from taxi business, pension and agriculture. The deceased was found aged 49 years at the time of his death. Multiplier of the 8 was applied for determination of just compensation. Ultimately, the Tribunal has awarded Rs. 2,24,000/- alongwith interest @ 12% per annum in favour of the claimant and against the appellant-Insurance Company, as mentioned in the impugned order.

We have heard learned counsel for the appellant, Sri Naresh Pant as well as learned counsel for the claimant-respondent, Sri Anil Kumar Joshi, and have carefully gone through the material on record including the impugned judgment and award.

Learned counsel for the appellant has advanced arguments in the light of the grounds taken in the memo of appeal and it has been submitted before us that the Tribunal has erred in fastening the liability on the Insurance Company without impleading the driver/owner of the vehicle as party to the proceedings. This arguments is misconceived. In this case, the owner-cum-driver himself has died in the motor accident. We have perused the written statement filed by the Insurance Company and

we find that on the pleadings of the Insurance Company-appellant, the learned Tribunal has framed all necessary issues in the case and has recorded its findings on all the Issue framed by the Tribunal. Mere denial of liability on any point itself is not a proof. The appellant has not adduced any evidence to show that the claim petition is not maintainable against it before the Tribunal. We have narrated the entire documentary evidence on record, which has been elaborately discussed by the Tribunal in its judgment and award.

The learned counsel for the appellant has also assailed the impugned judgment and award on the question of quantum of compensation and it has been submitted that the amount of compensation awarded by the Tribunal is excessive. This argument is not at all tenable in the eye of law. It is now well settled law that the scope of defence available to the Insurance Company in the present case is limited as covered by the provisions of Section 149(2) of the Act and it is not open to the appellant to challenge the quantum of compensation in appeal. We are supported in our view by law laid down by the Apex Court in the case of ***"National Insurance Co. Ltd. Chandigarh Vs. Nicolletta Rohtagi and others"[(2002)] 7 Supreme Court Cases, 456].*** In the concluding portion of para 18 of the judgment, the Apex Court has observed that ***"the consistent view of this Court had been that the insurer has no right to file an appeal to challenge the quantum of compensation or finding of the Tribunal as regards the negligence or contributory negligence of offending vehicle."*** It has further been held in paragraph 19 that ***"In absence of the existence of the conditions precedent mentioned in Section 170, the insurance company was not entitled to file an appeal on merits questioning the quantum of compensation."***

It has been lastly submitted on behalf of the appellant that in the present case the deceased Diwan Singh, who was owner-cum-driver of the Jeep No. UP 01-2678, himself was driving the

vehicle, therefore, the Insurance Company is not liable to pay compensation, as he was not covered under the Policey. It was vehemently argued that under the Insurance Policy, no extra premium was paid to cover personal accident insurance of the insured/owner, therefore, no liability to pay compensation can be fastened on the Insurance Company. We have gone through the impugned judgment and award. The learned Tribunal has disposed of Issue Nos. 1 to 4 together. Issue No.3 was to the effect whether the alleged vehicle was duly insured on the date of accident? The Tribunal only mentioned that the vehicle was insured on the date of accident. However, from the perusal of entire material before us including the impugned judgment and award, it is not shown whether any extra premium was paid by the owner/insured under the heading "own damage" for covering liability towards personal injury. Therefore, unless it is shows that the Insurance Policy covered personal accident insurance of the owner, in our opinion, the Insurance Company cannot be held liable to pay compensation. The learned Tribunal has nowhere recorded any finding to the effect that the owner of the vehicle paid premium to cover personal accident insurance. In the case of ***"Oriental Insurance Co. Ltd. V. Sunita Rathi & Others [1998, ACJ 121]*** it has been held by the Apex Court that the liability of an Insurance Company in only for the purpose of indemnifying the insured against liabilities incurred towards third person or in respect of damages to property. In the instant case, the learned Tribunal has not recorded any finding that under the Insurance Policy, there was personal accident insurance of the insured/owner, therefore, in our opinion it is a case fit to be remanded to the learned Tribunal and the finding of the learned Tribunal on Issue No.3 is liable to be set aside. The Tribunal shall decide the controversy whether the Insurance Policy covered the personal accident insurance of the owner of the vehicle or not afresh after giving opportunity of hearing to the claimants and the Insurance Company-appellant. The ultimate decision of the Claim Case No. 36 of 1999, Smt. Kuni Devi Vs. United India Assurance

Company Ltd., shall abide by the finding on Issue No.3 to be recorded by the Tribunal.

For the reasons and discussion aforesaid, the appeal deserves to be partly allowed.

The appeal is partly allowed. The finding of Tribunal on Issue No.3 is set aside and the case is remanded to the learned Tribunal for disposed of Issue No.3 afresh after due notice to the claimants and the Insurance Company.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned and shall be retained till the disposal of Issue No.3 afresh. If the amount has been paid to the claimant, it shall not be recovered till the decision afresh on Issue No.3.

The amount in the deposit with this Court shall be remitted to the Motor Accident Claims Tribunal concerned and shall be retained till disposal of Issue NO. 3 afresh.

(B.S. Verma, J.) **(P.C. Verma, J.)**

24-04-2008
RCP